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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:)	BK-S-09-21947-BAM
)	Chapter 13
MAHAMED A. YOUSSEUF,)	
)	
)	
Debtor(s).)	DATE: 05-11-10
_____)	TIME: 2:30 P.M.

MOTION FOR SUBSTANTIVE CONSOLIDATION

COMES NOW, MAHAMED A. YOUSSEUF, (hereinafter "Debtor" or "Yousseuf"), by and through his counsel, CHRISTOPHER P. BURKE, ESQ., (hereinafter "Burke") and Moves this Court to Substantively Consolidate his chapter 13 with his former business Green Cleaners Alteration Center, LLC., (hereinafter "Green Cleaners" or "LLC").

Yousseuf was the member of Green Cleaners. But Green Cleaners was dissolved September 22, 2009. The effect of the dissolution was that the assets of the LLC became the assets of the Debtor and are the subject of administration in this case.

Green Cleaners was dissolved post petition on September 22, 2009. A copy of the file-stamped Articles of Dissolution for a Nevada Limited-Liability Company is attached as Exhibit "A". A current printout of the status of the LLC from the website of the

1 Secretary of State is attached as Exhibit "B".

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3 **I**

4 **MOTION FOR SUBSTANTIVE CONSOLIDATION**

5 Youssouf seeks approval for substantive consolidation of his
6 bankruptcy estate with the assets of the former LLC. "The theory
7 of substantive consolidation emanates from the . . . 'power of the
8 bankruptcy court to subordinate claims or adjudicate equities
9 arising out of the relationship between the several creditors is
10 complete'." In re Bonham, 229 F.3d 750,764 (9th Cir.2000), citing
11 Sampsell v. Imperial Paper & Color Corp., 313 U.S. 215,219 (1941).

12 "[T]he theme of the Bankruptcy Act is equality of distribution".
13 Id at 219. "Orders of substantive consolidation combine the
14 assets and liabilities of separate and distinct - but related -
15 legal entities into a single pool and treat them as though they
16 belong to a single entity." Bonham at 764, citing Federal Deposit
17 Insurance Corp. v. Colonial Realty Co., 966 F.2d 57, 58-59 (2nd
18 Cir.1992).

19 Substantive consolidation "enabl[es] a bankruptcy court to
20 disregard separate corporate entities, to pierce their corporate
21 veils in the usual metaphor, in order to reach assets for the
22 satisfaction of debts of a related corporation". In re
23 Continental Vending Machine Corp. 517 F.2d 997,1000(2nd
24 Cir.1975).

25 "The consolidated assets create a single fund from which all
26 claims against the consolidated debtors are satisfied; duplicate
27 and inter-company claims are extinguished; and, the creditors of
28

1 the consolidated entities are combined for purposes of voting on
2 reorganization plans." Bonham at 764 citing In re Augie/Restivo
3 Baking Co., 860 F.2d 515, 518 (2nd Cir. 1988). The primary
4 purpose of substantive consolidation "is to ensure the equitable
5 treatment of all creditors." Id at 518.

6 The Second Circuit applies an independent test, which the
7 Ninth Circuit has adopted. Bonham at 766. This test requires the
8 consideration of two factors: "(1) whether creditors dealt with
9 the entities as a single economic unit and did not rely on their
10 separate identity in extending credit; or (2) whether the affairs
11 of the debtor are so entangled that consolidation will benefit
12 all creditors." In re Reider, 31 F.3d 1102, 1108 (11th Cir.
13 1994) (citing In re Augie/Restivo, 860 F.2d at 518).

14 Looking at this second factor, consolidation is justified
15 where "the time and expense necessary even to attempt to
16 unscramble them [is] so substantial as to threaten the
17 realization of any net assets for all creditors." Id at 519.
18 Clearly, the affairs of Youssouf and the LLC are so entangled
19 that consolidation will benefit all creditors. Failure to
20 consolidate will most likely lead to a chapter 7 where no creditor
21 will benefit.

22 If this Court allows Debtor and Green Cleaners to
23 consolidate, it expected an evidentiary hearing will be needed to
24 value the assets. Debtor believes the value of the assets is a
25 lot less than he originally estimated. If the value comes in
26 less, and Youssouf pays a similar plan payment all creditors
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1 benefit. In addition, Yousseuf may have tax refunds in the
2 future to turn over to the plan.

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4 **CONCLUSION**

5 Yousseuf requests this Court substantively consolidate the
6 former assets of Green Cleaners with his own estate.

7 Dated this 9th day of April, 2010.

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9 RESPECTFULLY SUBMITTED:

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11 /S/CHRISTOPHR P. BURKE, ESQ.
12 CHRISTOPHER P. BURKE, ESQ.
13 Attorney for Debtor
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